STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of UNIQUE LANAYE WOODY, DONTE MARTEZ WOODY, TYESHA CHAUNE WOODY, TREVON LASHAWN WOODY, and A'JAHAUNE RENEE WOODY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TANYA EVETTE WOODY,

Respondent-Appellant,

and

JOHN WOODY,

Respondent.

UNPUBLISHED
October 16, 2003

No. 244992
Wayne Circuit Court
Family Division
LC No. 99-376659

In the Matter of UNIQUE LANAYE WOODY, DONTE MARTEZ WOODY, TYESHA CHAUNE WOODY, TREVON LASHAWN WOODY, and A'JAHAUNE RENEE WOODY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN WOODY,

Respondent-Appellant,

and

No. 245741
Wayne Circuit Court
Family Division
LC No. 99-376659

TANYA EVETTE WOODY,

Respondent.

Before: Fitzgerald, P.J., and Zahra and Hood, JJ.

PER CURIAM.

Respondent Tanya Woody (respondent mother) appeals as of right and respondent John Woody (respondent father) appeals by delayed leave granted the order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

Respondents' parental rights were terminated pursuant to a judicial order adopting a referee's report and recommendation that their parental rights be terminated. A different judge later affirmed the referee's decision following respondents' request for judicial review pursuant to MCR 5.991.[1] Respondents' issues on appeal are directed at the factual findings and decisions of the referee. Because the parties do not raise any issue regarding respondents' request for judicial review, we need not consider that matter. See *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998). Limiting our review to the issues raised by respondents, we find no basis for disturbing the order terminating their parental rights.

As his sole issue on appeal, respondent father argues that the trial court erred in finding that a statutory basis for termination was established by clear and convincing evidence. We disagree. The evidence established that, during the three-year period that the trial court had jurisdiction over five of respondents' children, neither respondent was able to establish a suitable home for the children. The sixth child became a temporary court ward after her birth in February 2000. Respondents planned jointly for the children, despite continuing problems with substance abuse and domestic violence.

In light of the evidence that respondent father was not able to secure suitable, stable housing for the children during the three-year pendency of this case, we conclude that the trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The home that respondents obtained shortly before the termination hearing concluded was not suitable and, therefore, this material condition was never rectified.

Furthermore, despite evidence that respondent father had made some progress with his treatment plan, the court did not clearly err in finding that §§ 19b(3)(g) and (j) were also both

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[1] The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the trial court's decision.

proven. *In re JK*, 468 Mich 202, 214; 616 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 360-362; 612 NW2d 407 (2000). The evidence supports the court's determination that there was no reasonable expectation that respondent father would be able to provide proper care and custody within a reasonable time considering the children's ages. Also, while we agree that there was no evidence that respondent father physically abused the children, this did not preclude the court from determining that § 19b(3)(j) was also proven. Subsection (j) is not limited to physical abuse, but rather is broadly worded to require a "reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." A child may suffer a risk of harm in a number of ways, including harm to the child's life, physical health, and mental well-being. See *In re Trejo, supra* at 346. Because respondent father did not even have a suitable home for the children to return to, the court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing evidence.

Citing MCR 5.993(A)(1), respondent mother claims that the trial court lacked jurisdiction to take temporary custody over the children. Because respondent mother failed to file a timely, direct appeal from the challenged jurisdictional decision and dispositional order entered in 1999, this issue is not properly before us. The time limit for an appeal by right is a jurisdictional requirement, MCR 7.204(A), and the trial court's exercise of jurisdiction over the children may not be challenged by collateral attack. *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).

Respondent mother also argues that termination of her parental rights was not in the children's best interests.[2] Upon considering the record as a whole, we are not persuaded that the trial court clearly erred in its best interest determination. *In re Trejo, supra.* Although there was evidence that the children were bonded with respondent mother and each other, given the length of time that the children had been temporary court wards and the uncertainty that respondent mother would ever be able to provide a proper home for the children, the evidence did not establish that termination of her parental rights was clearly not in the children's best interests. *Id.* at 364; MCL 712A.19b(5).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood

[2] Respondent mother does not challenge the trial court's determination that the statutory grounds for termination were established by clear and convincing evidence and, therefore, we may assume that the court did not err in this regard. *In re JS & SM, supra* at 98.